



The Florida House of Representatives

Office of the General Counsel

Dean Cannon, Speaker
Office of the General Counsel

George T. Levesque
General Counsel

MEMORANDUM

OPINION 11 - 01

To: The Honorable Representative,
From: George Levesque, House General Counsel
Date: February 11, 2011
Re: Conflict of Interest

You have asked whether your role as the owner and chief executive officer of an engineering firm providing civil, environmental, and structural engineering services to private and governmental entities would place you in the position of having a conflict of interest with respect to your office as a member of the Florida House of Representatives. Specifically, you seek advice on whether there is any legal prohibition to your continuing to bid on projects for state agencies such as the Florida Department of Transportation, the Florida Department of Environmental Protection and various local governments.

I have reviewed the various laws relating to this issue and have concluded that while your firm can do business with state agencies and local governments, you must avoid being personally involved in the solicitation or transaction of services with state agencies; however you may personally be involved in the solicitation or transaction of services with local governments. Additionally, you will want to be mindful of potential voting conflicts. My opinion is discussed below.

As a preliminary matter, the provisions of Art. 2, § 8(e), Fla. Const., § 112.313, Fla. Stat., and House Rule 15.7 are applicable.

Section 8(e) of Article II of the Florida Constitution, § 112.313(9)(a)3, Fla. Stat., and House Rule 15.7 prohibits you, as a current member of the Legislature, from *personally* representing another person or entity for compensation before any state agency other than a judicial tribunal during your term of office; however this limitation is personal to you and does not apply to your company or its employees. *See e.g.*, CEO 08-20; and CEO 83-13. Because your business is run

through a corporation, the law prohibits you from representing your company before any state agency other than judicial tribunals. *See* CEO Final Order 90-86.

It is well established that local governments and water management districts are not state agencies for the purpose of this prohibition. *See* CEO 77-22 (concluding that a county commission is not a state agency); and CEO 91-54 (concluding water management districts are not a state agency within the meaning of Art. 2, § 8(e), Fla. Const.). As such, it is my opinion that you may *personally* represent your company before local governments and water management districts.

To reiterate, these prohibitions would not affect your continuing ability to personally be involved with solicitation and bidding on projects for municipal, county, or district governments as the prohibition relates only to state agencies. With respect to state agencies such as DOT or DEP, officers, agents, or employees of your company would not be prohibited from representing the company before state agencies as the prohibition is limited to your personal appearance before the state agency. Therefore, you should not participate in your company's proposal to a state agency and must avoid communicating with any person connected to the agency regarding the company's bid. *See e.g.*, CEO 83-13, CEO 84-9.

Section 112.313(7), Florida Statutes, provides:

(a) No public officer or employee of an agency shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, an agency of which he or she is an officer or employee . . .; nor shall an officer or employee of an agency have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties.

...

2. When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a public officer or employee of a legislative body shall not be prohibited by this subsection or be deemed a conflict.

(b) This subsection shall not prohibit a public officer or employee from practicing in a particular profession or occupation when such practice by persons holding such public office or employment is required or permitted by law or ordinance.

Under the first clause of § 112.313(7)(a), Fla. Stat., it is my opinion that there is no prohibited conflict. Section 112.313(7)(a), Fla. Stat., prohibits a member from having a contractual relationship with any business entity doing business with or regulated by their agency – in this case, the Legislature. *See* CEO 87-2. Nothing in your request suggests that you or your company will be doing business or considering doing business with the Legislature. Furthermore, to the extent that your company is regulated by the Legislature through the enactment of laws, the exemption provided in § 112.313(7)(a)2, Fla. Stat., would make the prohibition inapplicable.

Under the second part of § 112.313(7)(a), Fla. Stat., it is my opinion that there is also no prohibited conflict. This part of § 112.313(7)(a) prohibits a public officer from having any contractual relationship which would create a continuing or frequently recurring conflict between his private interests and the performance of his public duties, or which would impede the full and faithful discharge of his public duties. In *Zerweck v. State Commission on Ethics*, 409 So. 2d 57, 61 (Fla. 4th DCA 1982), the District Court of Appeal said that this provision establishes an objective standard which requires an examination of the nature and extent of the public officer's duties together with a review of his private interests to determine whether the two are compatible, separate and distinct, or whether they coincide to create a situation which "tempts dishonor." It would not appear from the facts as presented that a conflict exists.

Section 112.313(3), Fla. Stat., also prohibits a member from doing business with one's own agency. Because you have not indicated that the Florida Legislature is an entity with which you or your company would do business, i.e., purchase, rent, or lease any realty, goods, or services, this provision would be inapplicable.

Concerning voting conflicts, it is impossible to assess whether conflicts exist at this time. That analysis requires an examination of the matter pending and the facts potentially giving rise to the conflict. House Rule 3.2 requires you to abstain from voting on any to when you know or believe the measure would inure to your special private gain or loss. Section 112.3143, Fla. Stat., requires disclosure on measures which you know would inure to the special private gain or loss of any principal by whom you are retained. In the present case, the principal would be your company. As you begin to consider and cast your vote on legislation that comes before you, please keep these obligations in mind.

The above opinion is based on facts that you have provided. If the situation outlined is materially different than the facts stated or if there are additional relevant facts that have been omitted, I would need to review the new information, and my opinion may change accordingly.

I would be remiss if I did not provide some additional cautionary advice.

The Code of Ethics further provides that no member "shall corruptly use or attempt to use his official position or any property or resource which may be within his trust, or perform his official duties, to secure a special privilege, benefit, or exemption for himself or others." See § 112.313(6), Fla. Stat. Moreover, no member "shall disclose or use information not available to members of the general public and gained by reason of his official position for his personal gain or benefit or for the personal gain or benefit of any other person or business entity." See § 112.313(8), Fla. Stat. While I am not aware of any facts which would indicate that these provisions are applicable or may become applicable to your situation, it would be prudent to keep these in mind. The law grants latitude to members based upon the recognition that they are part-time legislators that require outside employment and have lives outside their public office. That concept sometimes may get lost in public discourse, and what may be a legally tolerated conflict of interest may be viewed as inappropriate or corrupt in the court of public opinion.